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August 19, 1994

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Mr. William Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Federal Express**

DOCKET FILE COPY ORIGINAL

**Re: PP Docket No. 93-253, Competitive Bidding**

Enclosed for filing are an original and twelve (12) copies of the Petition for Reconsideration and/or Clarification of Citizens Utilities Company in the above proceeding.

Please provide a stamped-in copy in the enclosed prepaid postage envelope.

Very truly yours,

Ellen S. Deutsch  
Senior Counsel

ESD:tb

Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act )  
Competitive Bidding )

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PETITION OF CITIZENS UTILITIES COMPANY  
FOR RECONSIDERATION AND/OR CLARIFICATION

CITIZENS UTILITIES COMPANY

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August 19, 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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of the Communications Act )  
Competitive Bidding )

AUG 22 1994

To: the Commission

FCC MAIL ROOM

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION**

Citizens Utilities Company ("Citizens"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. 1.429(f), hereby submits its Petition for Reconsideration and/or Clarification of rules regarding geographic partitioning by rural telephone companies ("telcos") adopted in the Fifth Report and Order in the above-captioned proceeding.<sup>1</sup> Citizens requests that the Commission reconsider its definition of rural telco for the limited purpose of voluntary geographic partitioning or, in the alternative, clarify that it will consider petitions for waiver from entities such as Citizens' local exchange carrier ("LEC") subsidiaries that do not meet the technical definition of rural telco but clearly fall within the policy justification for geographic partitioning.

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<sup>1</sup> Fifth Report and Order, PP Docket No. 92-253, released July 15, 1994, 59 Fed. Reg. 37566 (July 22, 1994).

## **I. BACKGROUND**

Citizens' LEC subsidiaries currently provide service to rural and small communities in Arizona, California, Idaho, Pennsylvania, New York, West Virginia, Tennessee and Utah. In 1993, Citizens entered an asset purchase agreement to acquire from GTE Corporation ("GTE") approximately 500,000 access lines located primarily in rural areas in nine states. That acquisition has closed with respect to operations in New York, West Virginia, Tennessee and Utah and is still pending in Arizona, California and Montana. The properties in each state operate as separate entities. When all properties close, Citizens' LEC subsidiaries will provide service to approximately 700,000 access lines.

Citizens has long provided local exchange service in rural areas and, with respect to its service areas, considers itself to be a "rural telco". Although the acquisition from GTE has significantly increased Citizens' total number of access lines, the acquisition has continued Citizens' tradition of providing service primarily in rural and small communities. The access lines acquired from GTE are primarily in rural and small communities and include many remote, sparsely populated areas. Even after the acquisition, none of Citizens' LEC subsidiaries provide service in metropolitan areas.

Like other rural telcos, Citizens is committed to providing high quality, technically sophisticated service to its present and new customers. In furtherance of that commitment, Citizens is exploring all opportunities for providing personal communications services ("PCS") in its own or adjacent service areas. Citizens has participated in the PCS and competitive bidding proceedings and has commented on the potential

for geographic partitioning to be an effective method of enabling rural telcos to bring PCS to rural and small communities that PCS licensees may otherwise not serve.<sup>2</sup>

## II. COMMISSION RULINGS ON GEOGRAPHIC PARTITIONING

In the Second Report and Order in PP Docket No. 93-253, the Commission adopted general rules and procedures to govern the competitive bidding process.<sup>3</sup> In its discussion of designated entities, it defined a "rural telephone company" as one which has 50,000 or fewer access lines and serves communities with 10,000 or fewer inhabitants. Second Report and Order at para. 282. The Commission also stated that partitioning of PCS service areas so as to permit rural telcos to provide service in their local exchange service areas "may indeed be a means to achieve Congress's goal of ensuring that advanced services are provided in rural areas". Id. at para. 243 n.186. The Commission stated, however, that the issue would be addressed in its reconsideration of the broadband PCS allocation rules in GEN Docket 90-314.

In that PCS Broadband Reconsideration Order<sup>4</sup>, the Commission, among other things, ruled that it would not adopt a policy allowing general geographic partitioning of service areas by PCS licensees. McCaw and other parties that filed petitions for reconsideration of the PCS Second

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<sup>2</sup> "Opposition of Citizens Utilities Company to Petitions for Reconsideration," GEN Docket No. 90-314, filed December 29, 1993.

<sup>3</sup> Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348, released May 4, 1994.

<sup>4</sup> Memorandum Opinion and Order, GEN Docket 90-314, released June 13, 1994.

Report and Order requested that the Commission authorize PCS licensees to subdivide their operating authority on a geographic or spectrum basis either pursuant to an agreement reached before bidding or after the license is awarded. The Commission concluded that "there is a significant risk that partitioning can be used to circumvent construction requirements." Broadband PCS Reconsideration Order at para. 83. However, the Commission stated that geographic partitioning may be a way to create PCS opportunities for rural telcos, adding that it would address the issue in a future proceeding in the competitive bidding docket. At that time, however, the rural telco definition for PCS had not been determined.

In the Fifth Report and Order in the competitive bidding docket, the Commission elaborated on its plan to permit rural telcos to obtain partitioned PCS licenses. Fifth Report and Order at para. 151. New Rule Section 24.714 provides that a "rural telephone company" (defined as those LECs having 100,000 or fewer access lines, including all affiliates)<sup>5</sup> may acquire a partitioned broadband PCS license through a post-auction voluntary assignment agreement with the MTA or BTA licensee or through a consortium formed in advance of bidding, which includes a partitioning plan. In either case, the Commission would require that the partitioned area conform to established geopolitical boundaries (such as

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<sup>5</sup> The Fifth Report and Order, departing from the 50,000 access line definition of rural telco in the general auction rules, established this 100,000 access lines definition of "rural telephone company" for purposes of awarding PCS licenses. Fifth Report and Order at para. 198; Section 24.720(e). The Commission subsequently adopted the 100,000 access lines definition as part of its general auction rules. Second Memorandum Opinion and Order, PP Docket No. 93-253, released August 15, 1994, at para. 76.

county lines), include the wireline service area of the rural telco applicant and be reasonably related to the rural telco's wireline service area that lies within the PCS service area.

On August 2, 1994, the Commission released a Further Notice of Proposed Rule Making on geographic partitioning in the competitive bidding docket ("Partitioning Further Notice").<sup>6</sup> The Commission discussed that it previously had declined to allow general partitioning of PCS service areas but determined that "to expedite the provision of broadband PCS in rural areas, which have historically suffered from delayed introduction of new services and fewer choices in service providers, rural telephone companies should be permitted to obtain PCS licenses by partitioning certain geographic areas from the licensed PCS service area (MTA or BTA)." Partitioning Further Notice at paras. 1-2. The Commission stated that its "rationale in allowing partitioning for rural telephone companies is that these companies are uniquely positioned to use their existing infrastructure to provide broadband PCS in rural areas." Id. at para. 3. The Partitioning Further Notice seeks comment on whether a similar post-auction PCS partitioning plan should be adopted for the benefit of businesses owned by minorities and/or women.

### III. DISCUSSION

#### **A. The Commission's Definition of Rural Telco Defeats the Policy Objective of Geographic Partitioning.**

Citizens urges the Commission to reconsider application of its

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<sup>6</sup> Further Notice of Proposed Rule Making, PP Docket No. 93-253, released August 2, 1994.

100,000 access lines definition of rural telcos for the limited purpose of voluntary geographic partitioning. As currently stated in the Fifth Report and Order, application of that definition defeats the purpose of allowing rural telcos to acquire licenses through geographic partitioning. Under the current definition, a LEC that serves rural areas will not be eligible to acquire a partitioned PCS license to serve that rural area if the LEC, and all of its affiliates, has more than 100,000 total access lines. For example, an entity such as Citizens that has several hundred thousand access lines nationwide, dispersed among many separate small and rural service areas, would not be eligible for a partitioned PCS license in any of its LEC service areas.

This result defeats the Commission's objective of allowing geographic partitioning in order to expedite provision of PCS in rural areas. As the Commission repeatedly has stated, telcos that serve rural areas are uniquely equipped to bring PCS to rural communities that otherwise would likely not be served. MTA or BTA licensees initially will focus on deploying PCS in metropolitan and densely populated portions of their service areas, leaving high-cost rural areas without PCS. With geographic partitioning, however, a PCS licensee would be able to partition the part of its BTA or MTA that corresponds to a rural telco's wireline service area, where the telco can utilize its existing infrastructure to provide PCS.

While the other policies such as bidding credits and "entrepreneur block" eligibility are aimed at providing an economic advantage to designated entities, geographic partitioning for rural telcos is justified specifically by the nature of the telco service area. In that



regard, Citizens' individual service areas are no different than the service areas of rural telcos that fall within the 100,000 total access lines definition. As applied in the Fifth Report and Order, however, the rules would preclude Citizens from acquiring a partitioned license to provide PCS to any of its rural customers. For those customers, Citizens is the only telco that is "uniquely positioned" to bring them PCS expeditiously by relying on existing infrastructure. Thus, as a result of the 100,000 total access lines rule, these rural customers will be denied the opportunity to receive PCS from their telco via a partitioned license.

The need to reconsider the 100,000 access lines definition for rural telco partitioning is heightened by the fact that the Commission also has relaxed PCS licensee construction requirements. The PCS Broadband Reconsideration Order requires 30 MHz licensees to construct facilities that provide coverage to only one-third of the population of their service areas within five years of initial license grant and to two-thirds within 10 years. PCS Broadband Reconsideration Order at para. 155. These relaxed requirements increase the likelihood that an MTA or BTA licensee will delay providing service to the high-cost rural areas such as those served by Citizens. The Commission should make a corresponding modification of its partitioning policy to enhance the opportunities for telcos that serve these areas to be able to fill in the gap.

Furthermore, Citizens believes that a 100,000 access lines limit for geographic partitioning in rural areas is not necessary to prevent entities from circumventing the Commission's rules. The partitioning

rules themselves provide sufficient safeguards against abuse. Rule Section 24.714 provides that a telco could obtain a partitioned license only through voluntary agreement with the PCS licensee. The applicant and/or licensee must fully disclose the terms of partitioning agreements. The Commission would have full review, under Rule Section 24.839, of any transfer or assignment to effectuate a partition. In addition, a telco that seeks a partitioned license to serve its rural wireline service area would have to comply with all other licensee eligibility criteria, including PCS-cellular cross-ownership and spectrum aggregation rules.

**B. The Commission Should Consider a Telco's Total Access Lines Within Each State or Consider Petitions for Waiver.**

To prevent the Commission's rural telco definition from defeating the purpose of its geographic partitioning rules, Citizens requests that the Commission consider a telco's total number of access lines on a state-by-state basis. For instance, a telco should be eligible to acquire a partitioned PCS license to serve a wireline service area as long as the telco has 100,000 or fewer access lines in the state in which the PCS serving area lies. This definition would apply only for determining eligibility for geographic partitioning and not for the other benefits that are aimed at providing economic advantage in bidding to rural telcos. For these other "designated entity" benefits, the 100,000 access lines definition would serve the Commission's purpose of making large LECs ineligible.

In the alternative, Citizens requests that the Commission clarify the Fifth Report and Order by stating that, when considering assignment applications to effectuate partitioning a PCS service area, it will

consider petitions for waiver when a telco seeking to acquire the partitioned license has affiliates that puts it over the 100,000 access lines limit but the partitioning would nonetheless achieve the policy objective -- bringing PCS to rural and small communities.

**C. Reconsideration and/or Clarification of the Rural Telco Definition for Geographic Partitioning Is Required to Further the Commission's Statutory Mandate.**

Throughout the PCS and competitive bidding proceedings, the Commission repeatedly has referred to the mandate imposed by Congress that it enact policies that promote the deployment of PCS in rural areas and provide opportunities to rural telcos and other designated entities to participate in the PCS market. 47 U.S.C. 309(j). While bidding credits, installment payments, tax certificates and other measures are central to furthering this mandate with respect to other designated entities, geographic partitioning is the key policy specifically aimed at promoting deployment of PCS in small and rural communities. As currently adopted, however, the partitioning rules do not promote deployment of PCS in all rural areas. In fact, they have the effect of specifically discouraging such deployment in certain rural areas that are different only because served by a LEC with more than 100,000 access lines. Thus, the reconsideration and/or clarification Citizens has proposed is necessary for the Commission to further its statutory mandate.

**IV. CONCLUSION**

Citizens respectfully requests that the Commission reconsider its definition of rural telco for the limited purpose of geographic

partitioning. As applied to geographic partitioning in the Fifth Report and Order, the 100,000 access lines definition of rural telco defeats the purpose of the partitioning policy -- enabling telcos that serve rural areas to use their existing infrastructure to expeditiously deploy PCS in areas that otherwise may be left unserved. Citizens requests that the Commission apply the 100,000 access lines definition on a state-by-state basis or, in the alternative, clarify that it will consider petitions for waiver when a telco does not meet the technical definition of rural telco but clearly falls within the policy justification for geographic partitioning.

Respectfully submitted,



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August 19, 1994

**CERTIFICATE OF SERVICE**

I, Antoinette Bever, hereby certify that I have this day caused the Petition for Reconsideration and/or Clarification in PP Docket No. 93-253 of Citizens Utilities Company to be served on the Federal Communications Commission in overnight express mail and have served a copy on all parties on the attached service list by first-class United States mail.

August 19, 1994

  
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